

**STARTING THE FIRST LAW SCHOOL CLINIC IN TAIWAN
AT NTU COLLEGE OF LAW**

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In the Spring 2013 semester, National Taiwan University College of Law offered an innovative new course called Law Clinic (in Chinese, the name of the course is 爭議處理與紛爭解決). In this class, law students had the opportunity to represent real clients in real cases under the close supervision of experienced attorneys as part of their law school experience.

Students in the Law Clinic represented dozens of clients in a wide variety of cases. They helped real clients with real problems involving consumer law, contract law, criminal law, family law, land use law, and other areas of law. Acting in the role of lawyers, they interviewed clients, conducted fact investigation, interviewed witnesses, counseled clients, drafted legal documents, and crafted innovative and compelling legal arguments.

Their work with clients gave the students valuable preparation for the practice of law. They were able to apply their knowledge of law, analytical skills, and legal reasoning powers to the problems faced by real clients, allowing them to understand better how theory and practice interact in real cases. They had a real context to explore and understand the roles that lawyers play in society. And they were able to learn and practice essential lawyering skills.

The Law Clinic was an unprecedented opportunity for Taiwanese law students to prepare for the profession that they are about to enter. This is the story of the first semester of clinical legal education in Taiwan.

1. What is a Law Clinic?

By including the Law Clinic in its curriculum, NTU College of Law joined a long tradition of clinical education in law schools around the world.¹The idea behind law clinics is simple: law students learn to practice law by acting in the role of lawyers under the close supervision of experts. Students work on real cases for real

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¹For a much fuller discussion of the history of clinical education as it relates to Taiwan, see Serge Martinez, *Law Clinics in Taiwan: Can Clinical Legal Education Succeed in this Civil Law Jurisdiction with an Undergraduate Legal Education System?* 7 National Taiwan University Law Review 343 (2012).

clients, doing the lawyering work on the cases and taking responsibility for the representation.

In addition to client representation, clinics provide countless opportunities for students and their clinic supervisors to interact in the classroom as well as in one-on-one meetings. Every aspect of a client's problem receives careful review, and every decision by students is thoughtfully considered. It is this structure for intensive feedback and constant reflection in real client matters that defines clinical legal education, and what distinguishes a law clinic from other practice-based educational experiences.

The clinical model has become an established part of legal education in many countries. This is not surprising—law clinics bring many benefits to student education: Students have the chance to apply their legal training—knowledge of the law, analytical reasoning, and critical thinking—to actual client matters, and to experience the complex relationship between theory and practice. Students get first-hand knowledge of the ethical challenges involved in law practice. They see the difference that having access to a lawyer can make for a client. And, through their representation, they can learn and practice many essential lawyering skills.

Clinical education provides a valuable complement to theory-based legal education. Working with real clients provides powerful motivation for student learning. It can enhance students' understanding of doctrine and law through understanding of how these affect—and are affected by—real clients in real situations. In addition, by giving law students practice experience, law clinics can help them compete in the legal marketplace, whether they plan to practice domestically or internationally.

2. The Spring 2013 Law Clinic at NTU College of Law

Before the Spring 2013 semester, there had never been a law school clinic in Taiwan. There was, however, a long history of law students providing legal service to the public through the legal services clubs at several Taiwanese law schools. For many years, these courses have given students the chance to use their knowledge of the law to counsel individuals who have legal problems. But students were not able to go beyond giving oral advice and counsel for these individuals. To provide the benefits to students—and to those in need of legal assistance—of a more extensive supervised practice, the NTU College of Law decided to open the Law Clinic.

To create the Clinic, the College of Law assembled a team of lawyers, law professors and administrative staff led by the authors of this report, Attorney Lo

Bing-Cheng(羅秉成) and Professor Serge Martinez.²In addition, a small group of experienced attorneys with ties to the College of Law contributed to developing the Law Clinic and resolving challenges that arose while creating the course.

In addition to several administrative and logistical matters, setting up the Clinic presented two primary challenges. The first was to create an effective structure to supervise student work. The second was to develop a consistent source of appropriate clients for the students in the Clinic to represent.

A. Supervising Law Practice by Students

The core of any clinical program is the intensive experience of students working with real clients. Obviously, inexperienced lawyers require expert supervision to protect clients from errors and malpractice. But the best supervision goes beyond just preventing mistakes: effective supervision also provides students with feedback that helps them reflect on and learn from their experiences. At its most effective, supervision in a law school clinic addresses two separate and sometimes competing concerns: ensuring excellent client representation and maximizing student learning from the representation experience. These two important objectives each present unique challenges.

In many law school clinics, a full-time member of the faculty is responsible for supervising client representation as well as student learning. This requires a full-time faculty member who is an experienced attorney and also able to represent clients. However, this was not an option for the Law Clinic in its first semester: Taiwanese law prohibits most law faculty in Taiwan from practicing law or entering into attorney-client relationships.

To make sure the Law Clinic was operating within the law, we created a two-part division of labor: the Clinic recruited volunteer attorneys to do case-specific supervision that would guarantee high-quality representation for clients, and Professors Martinez and Lo designed and implemented a teaching structure to maximize students' opportunities to learn from their representation experiences.

i. Client Representation

The student representation of clients presented two main problems: a) we needed several private attorneys who were willing to supervise students and to prioritize the Clinic's educational goals, and b) there were some potential limitations on our students' ability to represent clients in the role of lawyers.

²The Clinic would never have been able to open without the help of our fantastic team--- Jeng Ya-Wen (鄭雅文), Chiu Wei-Chih (邱韋智), Chao Guan-Wei (趙冠璋), Chen Wei-Jen (陳緯人), and Lu Shih-Wei (陸詩薇). We are extremely grateful for their contributions to the Law Clinic.

a. The Supervising Attorneys

Although we had some concerns about our ability to recruit enough volunteer attorneys to supervise our students' work, many local lawyers agreed to help the Law Clinic to achieve our educational and client representation goals.³ All of the attorneys agreed to carefully supervise students through frequent meetings to review student work, discuss their cases, and create plans for representation. The lawyers also agreed to give students a great deal of responsibility in these cases. Because these were practicing attorneys with active law practices, they had limited time to devote to the Clinic. As a result, we limited the responsibility of volunteer attorneys to one client matter at a time.

Although it was occasionally challenging in terms of coordination and administration, our arrangement with volunteer attorneys helped us make sure that the Law Clinic was providing first-rate legal representation to the clients. Our structure also gave students the opportunity to work not just with one or two faculty members but with a number of different lawyers, which exposed our students to a variety of lawyering styles and philosophies. We were extremely pleased with the response of the practicing attorneys in Taipei who supported the Law Clinic in such large numbers.

b. Student Practice

Because the Clinic's students would be providing legal representation to clients, we had to understand and respect any limitations on law student practice of law. This is not unique to Taiwan—concerns about practice of law by law students have been common around the world when law clinics have been first established. Although a few jurisdictions have made provisions for student practice, most, like Taiwan, do not expressly prohibit or allow law student practice of law.

Making sure that students were not practicing law without authorization required careful structuring and communication with the volunteer attorneys. We considered clinic students to be, in most respects, similar to law student interns working at a law firm under supervision. Therefore, we did not see any problem with them meeting with and interviewing clients, conducting legal research, drafting legal documents, reviewing documents, counseling clients, and other typical lawyering tasks, as long as they were carefully supervised and all their work was reviewed by a licensed attorney.

For the Law Clinic, the primary practical limitation is on students' ability to represent clients before prosecutors and judges. Taiwanese law actually makes

³ The Clinic received especially significant support from the partners and associates of the Formosa Transnational Law Firm.

some provision for non-attorney representation,⁴ but this representation depends on judicial approval. In light of this, we expected that our students would not regularly be allowed to represent clients in a courtroom setting.

ii. Student Learning

To help students learn from their lawyering experiences, we held a weekly seminar for all students enrolled in the Clinic. The seminar was designed to teach practical lawyering skills, address particular issues students were facing in client representation, and raise important questions about ethics and professional responsibility. Individual classes were designed to address topics such as interviewing skills, recognizing and resolving ethical problems, and exploring in great depth the question of how much lawyers can and should try to influence client goals, preferences and decisions. In other class sessions, students shared problems from their own casework and asked their classmates for help resolving them. Using real case experiences to frame and enhance our discussions, students achieved significant insights into many different aspects of practicing law.

In addition to the regular seminar, students met each week with Professor Martinez to discuss their cases. The purpose of these meetings was to address legal issues and decisions as well as general lawyering principles and more abstract ideas about the practice of law. Students were challenged to reflect on their representation and to wrestle with case-specific challenges. For example, one supervision meeting focused on what a lawyer can do when she believes that her client is not being completely honest with her. These sessions helped students reflect on their experiences representing clients.

B. Clients

Obviously, a law school clinic needs clients and cases. So a central element in the creation of the Law Clinic was finding a reliable source of clients who fit well with the Clinic's educational goals. To make sure that we could meet our goals for student learning and client representation, the Clinic developed several questions that we used to assess potential clients:

1. Would representing this client in this matter be a good educational experience for students?
2. Can the Clinic provide effective representation to this client?

⁴See Taiwan Code of Civil Procedure §68 (“only an attorney may act as an advocate, except where the presiding judge permits a person who is not an attorney to act as an advocate”) and Taiwan Code of Criminal Procedure Act §29 (“a defense attorney shall be a lawyer, provided that if permission is obtained from the presiding judge at trial, a person who is not a lawyer may be retained as a defense attorney”).

3. Would representing this client benefit the public interest?
4. Could the client afford a private attorney?
5. Would a lawyer be likely to make a difference in this case?
6. Is this case compatible with the Clinic's administrative limitations (such as the timing of our semesters, resource requirements, etc.)?

To reach potential clients, we developed relationships with the Legal Services Club of NTU College of Law and also with several local NGOs. These relationships allowed us to identify and take cases that were appropriate for the Law Clinic's educational and representational goals.

For educational purposes, we decided to limit the number of cases in the Clinic. The small caseload gave students ample time to work deliberately and thoughtfully on each of their client matters.

3. The First Semester

The Law Clinic started operating in February 2013 with ten adventurous students and a small group of excited teachers and supervising lawyers. We very quickly had significant demand for our legal services, and students and teachers gave significant consideration to each potential client. The result of this careful deliberation was a diverse and interesting set of cases for our students to work on.

During the semester, the students worked on 16 different cases representing dozens of individuals. Students helped indigent defendants in criminal matters. They represented employees in labor law cases. They counseled a neighborhood group in its dispute over land use by the government. They helped clients with family law matters. They represented an individual in a consumer law claim against a deceitful used car dealer. They handled criminal matters, contract disputes, real estate issues, and several other types of cases. In all of these matters, they used their knowledge of law, understanding of legal theory, critical reasoning, and analytical skills to address real legal issues with real-world consequences.

Under the close supervision of the volunteer supervising attorneys, students were responsible for drafting legal documents, conducting fact investigation and legal research, meeting with clients, developing case strategy, and other activities.⁵ They had numerous opportunities to engage in real lawyering tasks, and received vast amounts of feedback on their work and had many opportunities to reflect on their representation and refine their lawyering abilities.

Throughout the semester, the students were enthusiastic about their cases and motivated to work hard for the real clients who were depending on them. They

⁵ The only serious limitation we encountered was, as expected, some hesitance on the part judges and lawyers to allow law students to argue on behalf of their clients in court. We are confident that this will change in the future.

worked hard on their cases, putting in many, many hours of work in our small clinic office every week for just three credit hours. But we never heard anyone complain about the challenging coursework.

The first semester was a resounding success. We were, honestly, amazed by the progress we saw in our students as they went from complete novices to thoughtful young lawyers on their way to practice. And, significantly, every one of our many clients received first-rate legal representation from our students and the volunteer lawyers who supervised their cases.

The students were also very positive in their assessment of the Law Clinic. They found the Clinic to be an excellent and much-needed learning experience to help prepare them to be lawyers. They appreciated the opportunity to get early experience in practice and the way that the Clinic allowed them to reflect on and learn from their cases. The students were unanimous in their hope that the Law Clinic will continue to be a part of the curriculum at the NTU College of Law.

4. What is the Future of Law Clinics in Taiwan?

We enthusiastically agree with our students—the Law Clinic was a powerful and valuable teaching tool this semester. The vision shown by NTU College of Law and its willingness to create the Law Clinic has paid off tremendously for our students and their legal education. The systematic, thoroughly designed apprenticeship program of the Clinic has complemented their doctrinal knowledge and made them better prepared for practice. Their experience will give them a head start as they enter the increasingly crowded and competitive legal marketplace in Taiwan.

Of course, the model that we developed this semester at NTU College of Law is just a first step. Although the successes of this semester make clear that clinical education can work in Taiwan, there is significant room to improve and refine clinical education.

However, as we end this first semester, we are quite optimistic that clinical education will thrive in Taiwan. We hope that the Clinic's success this semester will serve as an invitation to legal educators throughout Taiwan to embrace and expand on the model developed at NTU College of Law to establish clinical education as an important tool to produce thoughtful and reflective lawyers. There is a place for law clinics in Taiwan, and we look forward to working with our colleagues to develop a uniquely Taiwanese model of clinical legal education.

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